

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH NAGPUR

Criminal Application No.1448/2006

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions : Court's or Judge's orders
and Registrar's orders.

CORAM : A.P. Lavande, J.
Dated : 5.6.2007.

Heard Mr. Malode, learned counsel for the applicant, Mr. Kilor learned counsel for the respondent no.1 and Ms. Jog, learned A.P.P. for respondent no.2.

By this application, the applicant who is original complainant in Summary Criminal Case No.1180/2002 seeks special leave to appeal against judgment and order of acquittal passed by Judicial Magistrate First Class, Warud by which learned Magistrate acquitted respondent no.1 for offence punishable under Section 138 of the Negotiable Instruments Act.

The complaint was filed on the ground that the complainant had advanced hand-loan of Rs. 1,50,000/- to the accused

who was in need of money and the cheque issued in discharge of the liability was dishonoured with an endorsement “fund insufficient”.

The Trial Court, after appreciating the evidence led by the parties, held that the complainant had failed to prove that the accused had issued cheque (Ex.52) in favour of the complainant in discharge of legally enforceable debt. The learned Magistrate also held that the complainant could not prove that the accused had received notice of instituting the complaint before the Magistrate. Based on these findings, learned Magistrate acquitted the accused for the offence charged.

Mr. Malode, learned counsel for the applicant-complainant submitted that the Magistrate has not appreciated the evidence led by the parties in correct perspective and has wrongly come to the conclusion that the complainant has not proved that the cheque was issued in discharge of legally enforceable debt. He further submitted that

the accused had even taken defence that the cheque was not signed by him which was negated by the evidence of an Expert who deposed that the signature on the cheque is that of the accused and, therefore, this is fit case in which special leave against judgment and order of acquittal deserves to be granted.

Per contra, Mr. Kilor, learned counsel appearing for respondent no.1 submitted that the evidence of the complainant and the accused clearly establishes that the complainant has miserably failed to prove that the cheque in question was issued in discharge of legally enforceable debt and in that view of the matter even if the signature on the cheque is proved to be that of the accused, the same does not take the case of the complainant any further. According to Mr. Kilor, there is no perversity in the finding recorded by the learned Magistrate to warrant interference in appeal against acquittal.

I have considered the submissions made by learned counsel and perused the records. In my opinion, the finding of the learned Magistrate that the complainant has failed to prove that the cheque was issued in discharge of legally enforceable debt is based upon proper appreciation of the evidence on record and as such cannot be termed as perverse to warrant interference in appeal against acquittal. I find merit in the submissions made by Mr. Kilor.

In view of the above, I do not find any merit in the application. The application is, therefore, dismissed.

JUDGE

A.